

# **NEW HAMPSHIRE INTERGOVERNMENTAL REVIEW PROCESS**

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**February 2006**

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### **Revision List**

November, 1986  
(Revised November, 1987)  
(Second Revision November, 1988)  
(Third Revision November, 1989)  
(Fourth Revision December, 1990)  
(Fifth Revision November, 1991)  
(Sixth Revision August, 1998)  
**(Seventh Revision February 2006)**

## **SUMMARY**

In 1982 President Ronald Reagan signed Executive Order 12372, which is intended to foster a strengthened intergovernmental partnership between the various levels of government. The Executive Order requires federal agencies to provide for consultation with state and local governments that supply non-federal funds for proposed federal financial assistance projects or direct federal development.

New Hampshire's Intergovernmental Review Process provides an opportunity to state and local agencies to review federal programs and activities. In 1983, NH issued Executive Order 83-10, designating the Director, Office of Energy and Planning (formerly Office of State Planning) as the Single Point of Contact (See Appendix VI). Under her/his direction the Single Point of Contact identifies state agencies that should be involved in the planning and development of activities covered by Executive Order 12372, and provides these agencies with the opportunity to evaluate proposals.

New Hampshire's nine (9) Regional Planning Agencies (RPAs) are designated as the Regional Clearinghouses and will coordinate and assist in the formulation of local government comments on programs and activities subject to the review.

## **PART 1 - FEDERAL ACTIVITIES REVIEW**

This section explains the procedures that have been developed to receive, evaluate, and formulate recommendations on federal programs and activities, including direct federal development, which are subject to state and local review under the Executive Order 12372, which has the following objectives:

- (a) To provide each state the opportunity to design and implement a system which allows the state to offer written input on federal programs and activities during the planning stages.
- (b) To enable each state to select those programs and activities which should be subjected to state and local scrutiny.
- (c) To make federal agencies more sensitive to the desires of a state prior to approving federal activities which have significant impacts on the state.
- (d) To foster coordination of views between adjoining states which have common interests as a result of the existence of interstate metropolitan areas.

### **1. PROGRAMS AND ACTIVITIES INCLUDED**

Federal activities subject to review under New Hampshire's Intergovernmental Review Process include all those listed in the 2005 Catalog of Federal Domestic Assistance (<http://12.46.245.173/cfda/cfda.html>).

### **2. CLEARINGHOUSE NOTIFICATION**

#### **A. REVIEW CYCLE**

Pursuant to the authority delegated under Presidential Executive Order 12372, the Governor's Executive Order 83-10 and New Hampshire Revised Statutes 4:12-q and r, any public or private applicant for assistance from a federal program subject to review under this process, or any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the State of New Hampshire applying for federal funds, aid, loans or grants, are responsible for submitting proper notification of the proposed activities to the Office of Energy and Planning (OEP) prior or simultaneous to submittal of the proposal to the assisting federal agency. This advance notification period applies to all activities subject to the Intergovernmental Review Process with the exception of noncompeting continuation awards.

It is the intention of OEP to complete the evaluation of all proposals within thirty (30) days of receipt. Additional days will not be utilized unless a conflict is identified which is resolvable, or the original submission does not contain adequate information to allow proper evaluation.

#### **B. REQUESTS FOR REVIEW**

Contingent upon the nature of the federal assistance application, requests for review should be submitted to OEP as follows:

1. Statewide - any applicant whose proposal has statewide implications should submit with a transmittal letter including the name and address of the federal agency to whom the application was sent, one (1) copy of:<sup>1</sup>
  - i. A SIGNED copy of [Standard Form 424](#) - standard cover sheet for all federal assistance applications (attached). (Currently reviewing protocol for electronically signed documents.)
  - ii. Program summary or 1-2 paragraph brief narrative that explains the proposal.
  - iii. Budget sheet [Standard Form 424-a](#) that indicates how funds will be expended.
  - iv. As appropriate, map(s) showing location of proposal.
2. Local/Regional - any applicant whose proposal has an identifiable impact within a particular community or area is required to submit to the State Clearinghouse six (6) copies of the above listed information.

<sup>1</sup> As of this writing – February 2006 – efforts are underway to coordinate this information with documents required by grants.gov so that this process will become electronically based. Updates to this protocol will be forthcoming as they are ready for public release.

### 3. SINGLE POINT OF CONTACT RESPONSIBILITIES

#### A. RECEIPT AND DISSEMINATION OF APPLICATIONS FOR REVIEW

The Director of OEP is designated as New Hampshire's Single Point of Contact and is thereby charged with fulfilling the requirements of the E.O. 12372 and federal agency implementing regulations. It is the responsibility of OEP to receive, disseminate, evaluate and notify the appropriate federal agency of the significance and acceptability of proposed federal or federally assisted programs or activities subject to E.O. 12372. In this capacity OEP is responsible for ensuring that both state and local input is accommodated.

OEP shall request comments and position statements from state agency heads, or designated agency coordinators, on each proposal received for evaluation. Agency responsibilities are delineated in Section 4A of this process.

OEP shall request comments and position statements from designated Regional Clearinghouses to ensure local input for each proposal received for evaluation. Regional Clearinghouse responsibilities are delineated in Section 4B of this process.

#### B. ADDITIONAL RESPONSIBILITIES

1. Assign a State Application Identifier (SAI) number and a Clearinghouse (CH) number to each grant application under review. This is necessary to identify the grant for further tracking and to assure the correct assignment of the state process recommendation.
2. Provide public agencies charged with enforcing or furthering the objectives of state and local civil rights laws with the opportunity to participate in the review process.
3. Provide state agencies, which are authorized to develop and enforce environmental standards, with the opportunity to comment on the environmental impact of federal or federally assisted programs.
4. Provide designated interstate metropolitan planning agencies with the opportunity to provide input on proposals, which impact their areas of jurisdiction.

#### C. STATE PROCESS RECOMMENDATION TO THE FEDERAL FUNDING AGENCY

OEP shall formulate a recommendation, which adequately reflects state statutes, regulations, gubernatorial policy, and comments from State Agencies and Regional Clearinghouses. OEP shall pass on comments received from local elected officials, if they are found to be in disagreement with the State's recommendation.

OEP is responsible for reconciling disagreements between state and local governments whenever possible. However, if agreement cannot be reached, with local comments submitted as outlined in Section 5, the OEP must forward these comments with the state recommendation.

Pursuant to Executive Order 12372, OEP is not required to submit local comments on a proposal when there is no state process recommendation. In this event local elected officials wishing to provide input will be notified that their comments should be sent directly to the applicant and appropriate federal agency for consideration pursuant to Section 401 of the Intergovernmental Cooperation Act of 1968. This Act requires that all options be considered by a federal funding agency prior to making a project decision.

#### D. FEDERAL AGENCY RESPONSE

Federal agencies are required to accommodate a state process recommendation or provide an explanation to OEP as to why a recommendation is not adopted. Except in special cases where waivers are invoked, the federal agency must wait ten (10) days after providing an explanation (fifteen (15) days if the initial explanation is made in writing) before the program decision is implemented. In instances of non-accommodation, the OEP will notify the interested state agency or local official of the intention of the federal agency. The concerned state agency or local official may then seek other remedies.

## 4. REVIEW AGENCY RESPONSIBILITIES

Presidential Executive Order 12372 specifically provides for consultation with both state and local officials on those activities, which are subjected to the review process. The responsibilities of these review agencies are dealt with separately in the following sections.

### A. STATE AGENCY RESPONSIBILITIES

Each participating state agency shall:

1. Designate a coordinator who is responsible for ensuring the proper and timely flow of information between the agency and OEP.
2. Identify those activities it wishes to review which have a potential impact on its areas of concern. This identification may be updated on a routine basis and must be on file at OEP.
3. Develop an internal review procedure that can evaluate and provide agency comments on proposals within the time limits imposed by the review process.
4. Ensure that comments made by the agency are transmitted to OEP and are consistent with the guidelines contained in Section 5.
5. Completed "request for review" must be signed by the agency head or the designated agency coordinator.

### B. LOCAL RESPONSIBILITIES

For the purpose of analyzing the potential impact and acceptability of proposed federal or federally assisted activities on local government, regional planning agencies (RPAs) have been designated as Regional Clearinghouses. This designation requires that the RPAs will coordinate and assist local government in developing input on activities subjected to the review procedures. This input, when consistent with the guidelines in Section 5 will be incorporated into the state position or attached to the state recommendation for consideration by the appropriate federal agency.

Each RPA shall develop internal review procedures.

## 5. REVIEW COMMENTS

As explained in Section 6 each federal agency is required to make efforts to accommodate the concerns of state and local governments that are transmitted through the IRP. OEP expects that all such comments or recommendations submitted for consideration in the development of the official state position be substantiated by statute, regulations, adopted plans and policies or other established criteria utilized to evaluate the proposed activity.

### A. The following types of comments do not coincide with the intent or purpose of this process:

1. Value judgments as to what priorities should receive federal aid.
2. The acceptability of the existing legislation that fosters the program.
3. The abilities of the funding agency to fairly administer a program.

### B. The following is a non-inclusive list of concerns which could be utilized:

1. The degree to which the project is compatible with state, area, or local comprehensive planning efforts.
2. The potential of the proposal to duplicate or negate the efforts of similar on-going programs.
3. Technical changes in the project's design which might increase its effectiveness or efficiency.
4. The extent to which the project contributes to the achievement of state, areawide, and local objectives and priorities relating to natural and human resources and economic development, including:
  - (a) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes
  - (b) Wise development and conservation of natural resources, including land, water, mineral, wildlife, and others.
  - (c) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods.

- (d) Adequate outdoor recreation and open space.
  - (e) Protection of areas of unique natural beauty, historical and scientific interest.
  - (f) Properly planned community facilities, including utilities for the supply of power, water and communications, for the safe disposal of wastes, and for other purposes.
  - (g) Concern for high standards of design.
5. Any adverse environmental impacts.
  6. Effects on energy resource supply and demand.
  7. The extent to which people or businesses will be displaced and the availability of relocation resources.
  8. The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sections of the area population, including minority groups.
  9. In the case of a project for which assistance is being sought by a special purpose unit of local government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied, or plans to apply, for assistance for the same or a similar type of project.

## 6. FEDERAL AGENCY RESPONSIBILITIES

Presidential Executive Order 12372 affords each state the opportunity to review and coordinate with federally-assisted programs prior to approval of these programs by the appropriate federal agency. Each federal agency is required to:

- A. Utilize the state process to determine official views of state and local elected officials. In New Hampshire the single point of contact is designated as the Director of the Office of Energy and Planning (OEP).
- B. Communicate with state and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.
- C. Make efforts to accommodate state and local concerns with proposed federal financial assistance. For those cases where the concerns cannot be accommodated, federal officials shall explain the basis for their decision in a timely manner within ten (10) working days.
- D. Allow the state to simplify and consolidate existing federally required state plan submissions. Where state planning and budgeting systems are sufficient and when permitted by law, the substitution of state plans for federally required state plans shall be encouraged by the agencies. The specific NH State position on this issue is contained in Part II.
- E. Seek the coordination with other states when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers of other interstate areas.
- F. Support state and local governments by discouraging the re-authorization or creation of any planning organization which is federally funded, which has a federal-prescribed membership, which is established for a limited purpose, and which is not an adequate representative of, or accountable to, state or local elected officials.

## PART 2 DEVELOPMENT AND REVIEW OF FEDERALLY REQUIRED STATE PLANS

Section 2 (d) of Executive Order 12372 requires federal agencies to allow states to simplify and consolidate existing, federally required state plan submissions. Where state planning and budgeting systems were sufficient, the substitution of state plans was encouraged by the federal agencies.

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## APPENDIX I

### EXECUTIVE ORDER 12372 INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401 (a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231 (a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

**SECTION 1.** Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

**SECTION 2.** To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

- (a) Utilize the State process to determine official views of State and local elected officials.
- (b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.
- (c) Make efforts to accommodate State and local elected officials concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.
- (d) Allow the State to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.
- (e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate mechanisms that are redesignated as part of the State process may be used for this purpose.
- (f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

### SECTION 3.

- (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.
- (b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

**SECTION 4.** The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

### SECTION 5.

- (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.



(b) The rules and regulations which result from the process indicated in Section 5 (a) above shall replace any current rules and regulations and become effective April 30, 1983.

**SECTION 6.** The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401 (a) of that Act (42 U.S.C.42331 (a)), in a manner consistent with this Order.

**SECTION 7.** The Memorandum of November 8, 1968, is terminated (33 Fed. Reg. 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

**SECTION 8.** The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

THE WHITE HOUSE

July 14, 1982

Ronald Reagan

**APPENDIX II****EXECUTIVE ORDER 12416 OF APRIL 8, 1983 INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS**

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to allow additional time for implementation by State, regional and local governments of new Federal regulations which foster an intergovernmental partnership and strengthened federalism, it is hereby ordered as follows:

**SECTION 1.** The preamble to Executive Order No. 12372 of July 14, 1982, is hereby amended by inserting, after words "42 U.S.C. 4231 (a)", the following phrase: ", Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334)".

**SECTION 2.** Section 5 (b) of Executive Order No. 12372 is amended by deleting "April 30, 1983" and inserting in its place "September 30, 1983."

**SECTION 3.** Section 8 of Executive Order No. 12372 is amended by deleting "within two years" and inserting in its place "by September 30, 1984."

Ronald Reagan

THE WHITE HOUSE

April 8, 1983

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## APPENDIX III

### THE INTERGOVERNMENTAL COOPERATION ACT OF 1968

#### SECTION 401

##### 6506. Development Assistance

(a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development (including programs and projects providing assistance to State and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

- (1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.
- (2) Wise development and conservation of all natural resources.
- (3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.
- (4) Adequate outdoor recreation and open space.
- (5) Protection of areas of unique natural beauty and historic and scientific interest.
- (6) Properly planned community facilities (including utilities for supplying power, water and communications) for safely disposing of wastes, and for other purposes.
- (7) Concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall consult with and seek advice from all other significantly affected executive agencies, in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

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**APPENDIX IV****THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966****SECTION 204****3334. Coordination of Federal aides in metropolitan areas.**

(a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review:

- (1) To any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government with whose jurisdiction such agency is authorized to engage in such planning, and
- (2) If made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b) (1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with the comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statement referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c) of this section, or such application, has lain before an appropriate areawide agency or instrumentality or unity of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the applicant which, in light of the purposes of this subchapter, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

**APPENDIX V****NEW HAMPSHIRE REVISED STATUTES ANNOTATED 4-C:4****Administrator of Federal-State Financial Information**

I. It is the intent of the general court that the position of administrator of federal-state financial information be created in the Office of State Planning to inventory and monitor the use of federal funds in New Hampshire. The general court intends that the executive and legislative branches of state government shall be aware of all federal funds received and used in New Hampshire.

II. There is established in the Office of State Planning a position to be known as federal-state financial information administrator. The duties of the administrator shall include, but not be limited to, the following:

- (a) To maintain a data base, to which the general court shall have access, concerning all federal funds available to all state departments, municipalities, and other agencies within the state.
- (b) To report on all such federal funds coming into the state of New Hampshire, whether to public or private agencies, to the director of the Office of State Planning who shall annually issue such report to the public.

Source: Chapter 283, Laws of the 1987 Session of the General Court

**APPENDIX VI****STATE OF NEW HAMPSHIRE****CONCORD, 03301****EXECUTIVE ORDER 83-10**

EXECUTIVE ORDER DESIGNATING THE OFFICE OF STATE PLANNING AS THE SINGLE POINT OF CONTACT UNDER NEW HAMPSHIRE'S INTERGOVERNMENTAL REVIEW PROCESS.

**WHEREAS**, President Reagan on July 14, 1983, signed Executive Order 12372; and

**WHEREAS**, Executive Order 12372 is intended to expand and strengthen the system of intergovernmental consultation being carried out under OMB Circular A-95; and

**WHEREAS**, Concurrent with the issuance of Executive Order 12372 OMB, Circular A-95 was rescinded effective on September 30, 1983; and

**WHEREAS**, Executive Order 12372 enables and encourages states to establish their own review mechanism; and

**WHEREAS**, the New Hampshire Office of State Planning, offering consultation with local elected officials, has proposed an Intergovernmental Review Process which is consistent with the objectives of Executive Order 12372;

**NOW, THEREFORE, I, JOHN H. SUNUNU**, Governor of the state of New Hampshire, by virtue of the authority vested in me under Part 2, Article 41 of the New Hampshire Constitution;

Do hereby designate the New Hampshire Intergovernmental Review Process as the official state system by which state and local governments can provide input into federal programs and activities; and

Do further designate the Director, Office of State Planning, or his designee as the official single point of contact under the review process with responsibility for reviewing all requests, applications and agreements relating to participation in any federal program from which federal funds may be received, including proposed direct activities by federal agencies.

Given under my hand and seal at the Executive Chamber in Concord this nineteenth day of October, in the year of Our Lord one thousand nine hundred eighty-three and of the Independence of the United States of America, the two hundred and eighth.

JOHN H. SUNUNU

Governor of New Hampshire